

MINE MANAGEMENT CORP.

IBLA 84-245

Decided September 18, 1985

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring certain lode mining claims abandoned and void. A MC 113869 through A MC 113886

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

BLM may properly declare unpatented mining claims abandoned and void pursuant to 43 U.S.C. § 1744 (1982), when the claimant fails to file prior to Dec. 31 of any calendar year either evidence of annual assessment work or a notice of intent to hold.

2. Federal Land Policy and Management Act of 1976: Assessment Work

When a claimant fails to timely file an affidavit of assessment work or notice of intent to hold, the Board lacks authority to excuse lack of compliance, extend the time for compliance, or afford any relief from the statutory consequences.

APPEARANCES: Dennis K. Pickens, President, Mine Management Corporation.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Mine Management Corporation (MMC) has appealed from a letter decision of the Arizona State Office, Bureau of Land Management (BLM), dated November 21, 1983. The decision rejected an affidavit of assessment work filed by MMC on October 17, 1983, on behalf of its Savoy Lode Claims 1 through 18 (A MC 113869 through A MC 113886) because no affidavit had been filed in calendar year 1982, and it allowed MMC 30 days to produce evidence that the missing affidavit had been filed, after which the claims would be removed from the public records as abandoned and void by operation of law. MMC then requested and was granted an extension of time to January 20, 1984,

in order to obtain records from the company it had hired to perform assessment work. In addition, this Board granted an extension of time to file a statement of reasons. See 43 CFR 4.22(f).

On May 8, 1984, this Board suspended consideration of mining claim recordation cases, including this case, pending determination of the appeal of the decision in Locke v. United States, 573 F. Supp. 472 (D. Nev. 1983). On April 1, 1985, the Supreme Court issued its decision, United States v. Locke, 105 S. Ct. 1785 (1985), in which the Court found section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), to be constitutional, within the affirmative powers of Congress, and not violative of the due process of mining claimants. Consideration of this appeal may now proceed.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1982), requires the owner of an unpatented mining claim located on public land to file with the proper BLM office, on or before December 30 of each calendar year, an affidavit of assessment work or notice of intention to hold the claim. The statute also provides that failure to file shall be conclusively deemed to constitute an abandonment of the mining claim. As no filing was made within calendar year 1982, BLM properly declared MMC's claims to be abandoned and void. Mermaid Mining Co., 65 IBLA 172 (1982); Kivalina River Mining Association, 65 IBLA (1982); Margaret E. Peterson, 55 IBLA 136 (1981).

In its statement of reasons for appeal, MMC argues that Congress intended that there be a remedy for failure to timely file documents required by section 314. In support, it points to subsection 314(c), 43 U.S.C. § 1744(c) (1982). Although that subsection does create an exception, it applies not to filings required by section 314 but, in the plain language of the provision, to instruments "not timely filed for record under other Federal laws" (emphasis supplied). In addition, the United States Supreme Court in Locke, supra, rejected the argument that substantial compliance, in that case a filing made one day late, is sufficient under the Act. Since a filing made one day late is not sufficient, clearly no remedy was available a year later when the absence of a document for 1982 was brought to MMC's attention by BLM.

[2] Appellant also requests this Board to allow it "to file documents or other statements to correct an obvious oversight and/or error." It is unclear what relief appellant desires. To the extent it seeks an order permitting it to now file with BLM the missing affidavit, this Board does not have the power to grant such a request. The responsibility for complying with the filing requirements of FLPMA rests with the owner of an unpatented mining claim. This Board has no authority to excuse lack of compliance, extend the time for compliance, or afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). To the extent appellant is requesting permission to file proof that an assessment work affidavit was filed with BLM prior to December 31, 1982, such proof should have been submitted with the statement of reasons for appeal or a statement made that proof would follow once it was obtained pursuant to the extension granted by BLM. Because no proof of timely filing now appears in the record, we must affirm BLM's decision. If, perchance, appellant did in fact obtain and has

been holding such proof, 1/ it is reminded that for such extraordinary circumstances, a motion for reconsideration may be filed with this Board. See 43 CFR 4.21(c). Appellant may also wish to consult with BLM as to the possibility of relocating its claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

1/ As stated by BLM in its letter, such proof would consist of a letter or other acknowledgement of receipt by BLM, a copy of the affidavit showing a BLM date and time stamp, or other evidence tending to establish that an affidavit of assessment work or notice of intent to hold was received by BLM prior to Dec. 31, 1982.

